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No. 13097

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United States  
Court of Appeals  
for the Ninth Circuit.

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CHARLES A. CRISPIN AND ALMA B.  
CRISPIN,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.

FILED

NOV 14 1951



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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Attorneys for Appellee.





In the United States District Court for the  
Northern District of California

29210-H

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

CHARLES A. CRISPIN and  
ALMA B. CRISPIN,  
Defendants.

### COMPLAINT

Now Comes the plaintiff in the above-entitled action, by Frank J. Hennessy, United States Attorney, and for claim against the defendants, alleges as follows:

#### I.

During all times hereinafter mentioned the plaintiff was and is now a corporation sovereign and body politic.

#### II.

During all times hereinafter mentioned the defendants were husband and wife and they reside at or near Los Gatos, Santa Clara County, California.

#### III.

This action was authorized by the Commissioner of Internal Revenue of the United States Treasury Department; and is being brought under the direction of the Attorney General of the United States.

## IV.

On October 13, 1947, the plaintiff refunded federal income taxes for the calendar year 1943, to the defendants in the amount of \$261.24 and paid interest to them thereon in the amount of \$56.95, making a total amount of \$318.19.

## V.

On February 11, 1948, the plaintiff refunded federal income taxes for the calendar year 1944, to the defendants in the amount of \$251.34 and paid interest to them thereon in the amount of \$45.24, making a total amount of \$296.58.

## VI.

No part of either of the refunded amounts of \$261.24 and \$296.58 was an overpayment of the income taxes of the defendants for the years 1943 and 1944. On the contrary, the whole of said refunds and interest payments were erroneously made and thereupon the defendants became indebted to the plaintiff in the amount of \$614.77.

## VII.

On or about August 3, 1949, the plaintiff made demand upon the defendants for the repayment of the whole of said amount of \$614.77 as taxes refunded and interest paid to the defendants for said years 1943 and 1944. No part of said amount has been repaid.

Wherefore, the plaintiff demands judgment

against the defendants for the full amount of \$614.77 and interest thereon as allowed by law.

/s/ FRANK J. HENNESSEY,  
United States Attorney.

By /s/ C. ELMER COLLETT,  
Assistant U. S. Attorney.

[Endorsed]: Filed October 13, 1949.

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[Title of District Court and Cause.]

ANSWER

Defendants appear and answer the complaint as follows:

I.

Defendants admit the allegations of paragraphs I, II, IV, V, and VII of the complaint.

II.

Having neither belief nor information sufficient to form a belief, defendants deny the allegations of paragraph III of the complaint.

III.

Defendants deny each and every allegation in paragraph VI of the complaint.

Wherefore, defendants pray that plaintiff take nothing by its suit, and for their costs incurred.

/s/ VALENTINE BROOKES,

/s/ ARTHUR H. KENT,

Attorneys for defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed October 21, 1949.

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[Title of District Court and Cause.]

#### MEMORANDUM OPINION AND ORDER

Defendants, United States citizens residing in California, have contested the right of the United States to recover an alleged erroneous refund of taxes from them. The dispute concerns certain funds which defendants received pursuant to an annuity policy which defendant Charles A. Crispin obtained by reason of his employment with the Standard-Vacuum Oil Company.

Prior to January 1, 1941, defendants were residents of China, where Charles A. Crispin was employed by Standard-Vacuum Oil Company in China until his retirement. He participated in a group annuity plan of his employer under which an annuity contract was purchased for him. The employer and employee both made annual contributions. Crispin contributed \$2,156 toward the cost; his employer contributed \$30,631.68. The entire cost was paid when defendant Charles Crispin became

eligible to retire on September 17, 1940, on which date his rights became fixed and non-forfeitable. Until retirement, Crispin had no vested right to the employer's contributions.

Under the retirement plan October 1, 1940, was the certificate anniversary. Receipt of the annuity payments was to begin as soon after that date as defendant Crispin retired. This he did on January 1, 1941.

For the years 1943 and 1944, defendants received annuities of \$2,869.32 per year. They computed their income taxes upon the taxable portion of their annual receipts as if the cost of the annuity contracts were \$2,156.00, such sum representing the actual contribution of Charles A. Crispin. Thereafter they filed refund claims on the theory that the cost of the contracts included the employer's contributions, as well as those of Crispin. Plaintiff allowed refunds, but commenced timely action to recover the refunds. This action was brought under the provisions of Sections 3740 and 3746 (b) of the Internal Revenue Code for recovery of an erroneous refund.

Plaintiff contends that under Internal Revenue Code Sections 22(a) and 22 (b) (2) (B) defendants are not entitled to exclude the sums paid by the employer for the annuity policy. (26 U.S.C.A. 22 (a), (22 (b) (2) (B) )<sup>1</sup>. The United States

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<sup>1</sup>“(B) Employees' Annuities. — If an annuity contract is purchased by an employer for an employee under a plan with respect to which the employer's contribution is deductible under section

asserts that the \$30,631.68 paid by the employer is not a part of the cost of the annuity to the employee and cannot be used by him to compute the employee's cost of the annuity.

In the action brought by Charles L. Jones, 2 T. Ct. 924, analysis of this problem was made in an opinion which ruled in favor of the Government. The only distinction between the instant case and that of Charles L. Jones is the place of residence of the taxpayer. Defendants, as residents of China during the years of their employer's contribution to the annuity, were tax exempt. It is their view that this circumstance is sufficient to warrant the Court in making a different ruling from that of the Tax Court in the Jones case.

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23 (p) (1) (B), or if an annuity contract is purchased for an employee by an employer exempt under section 101 (6), the employee shall include in his income the amounts received under such contract for the year received except that if the employee paid any of the consideration for the annuity, the annuity shall be included in his income as provided in subparagraph (A) of this paragraph, the consideration for such annuity being considered the amount contributed by the employee. In all other cases, if the employee's rights under the contract are nonforfeitable except for failure to pay future premiums, the amount contributed by the employer for such annuity contract on or after such rights become nonforfeitable shall be included in the income of the employee in the year in which the amount is contributed, which amount together with any amounts contributed by the employee shall constitute the consideration paid for the annuity contract in determining the amount of the annuity required to be included in the income of the employee under subparagraph (A) of this paragraph."



In view of the fact that defendant Charles A. Crispin's right to the annuity did not become non-forfeitable until October, 1940, the Court deems the distinction immaterial. The fact that the defendant resided in China prior to 1941, and was thereby exempt from income tax has no bearing on the issue. In fact, if he were, during those years, a resident of the United States, the payments made by the employer would not be income and were not includible in gross income. While the factual differences between the Jones and the instant case establish the equitable standing of present defendants as opposed to Jones—a United States resident who had never paid taxes on the controverted sum—, they do not constitute the basis for a different ruling.

The recent decision of *Ella B. Higgs*, 16 T. Ct., Case No. 2, decided January 8, 1951, is consistent with and follows the ruling made in the case of *Charles L. Jones*, *supra*.

In the light of the above-cited interpretations of the relevant sections of the Internal Revenue Code, this Court holds that the cost of the annuity to the defendant Charles Crispin was limited to his own contribution of \$2,156.00. The contributions made by Standard-Vacuum Oil Company in the amount of \$30,631.68 were and are taxable when received and cannot be considered a part of the cost of the annuity.

Accordingly, judgment shall be entered in favor of the plaintiff in the amount prayed, upon prepara-

tion of findings of fact and conclusions of law consistent with this decision.

Dated May 1, 1951.

/s/ GEORGE B. HARRIS,  
United States District Judge.

[Endorsed]: Filed May 1, 1951.

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[Title of District Court and Cause.]

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled case came on regularly to be heard on December 27, 1950, before the Honorable George B. Harris, District Judge, presiding without a jury. The plaintiff was represented by its attorneys Frank J. Hennessy, United States Attorney, and Macklin Fleming, Assistant United States Attorney, and the defendants by their attorneys Arthur H. Kent and Valentine Brookes. The case was submitted on a stipulation of facts, oral and written evidence and argument of counsel. The court having been fully advised in the premises and having delivered a written opinion, now makes the following Findings of Fact and Conclusions of Law:

#### I.

That the defendants were residents of Los Gatos, Santa Clara County, California, at the commencement of the suit.



## II.

That this action was authorized by the Commissioner of Internal Revenue and directed to be brought by the Attorney General of the United States under the provisions of Internal Revenue Code Sections 3740 and 3746 (b).

## III.

That the defendant Charles A. Crispin was employed by Standard-Vacuum Oil Co. from 1930 to 1941, and resided continuously in China during this period of time.

## IV.

That defendant Charles A. Crispin participated in a group annuity plan of his employer whereby both employer and employee made contribution to the Metropolitan Life Insurance Company.

## V.

That Charles A. Crispin contributed \$2,156.00 toward the cost of the annuity, while the employer contributed \$30,631.68.

## VI.

That under the retirement plan defendants' rights to the annuity became fixed and nonforfeitable when defendant Charles A. Crispin became eligible to retire, and payment to defendants of the annuity payments was to begin as soon after the certificate anniversary date as defendant Charles A. Crispin actually retired. The certificate anniversary date was October 1, 1940.

## VII.

That on September 17, 1940, Charles A. Crispin became eligible to retire, which retirement was scheduled to be on January 1, 1941, and on which date he actually retired.

## VIII.

That due to military operations, American civilians were evacuated from China and defendants arrived in the United States on December 10, 1940.

## IX.

That during the calendar year 1943, defendants received the sum of \$2,869.32, pursuant to the terms of the aforementioned annuity agreement, and the full amount thereof was included in their income tax return for the year 1943, in computing gross income. The resulting tax in the sum of \$421.91, was paid to the Collector of Internal Revenue for the First Collection District of California.

## X.

That on January 20, 1947, defendants filed an amended income tax return for the calendar year 1943, and included the sum of \$983.63 as taxable income received under the annuity agreement in computing gross income for the taxable year. Upon filing a claim, the sum of \$261.64 plus interest of \$56.95, or a total of \$318.19, was refunded to the defendants by the Collector of Internal Revenue on October 13, 1947.

## XI.

That during the calendar year 1944, defendants received the sum of \$2,869.32 pursuant to the terms of the aforementioned annuity agreement, and the full amount thereof was included in their income tax return for the year 1944, in computing gross income. The resulting tax in the sum of \$251.34 was paid to the said Collector.

## XII.

That on December 4, 1947, defendants filed an amended income tax return for the calendar year 1944, and included the sum of \$983.63 as taxable income received under the annuity agreement, in computing gross income for the year 1944. Upon filing a claim, the sum of \$251.34 plus interest of \$45.24, or a total of \$296.58, was refunded to the defendants by the said Collector on February 11, 1948.

## XIII.

That this action was commenced on October 13, 1949.

## Conclusions of Law

## I.

That the sums paid by Standard-Vacuum Oil Company for the annuity are not a part of the cost of the annuity to defendants.

## II.

That the sums paid by the employer were not income to the defendants when made, and defendants did not have a vested interest in these payments until actual retirement.

## III.

That the cost of the annuity to defendant Charles A. Crispin is limited to his actual contributions of \$2,156.00.

## IV.

That the refunds made to defendants for the calendar years 1943 and 1944, were erroneous and should be returned to plaintiff.

Now, Therefore, it is order and adjudged that plaintiff recover the sum of \$614.77 plus interest as provided by law and costs of suit incurred.

Dated this 19th day of June, 1951.

/s/ GEORGE B. HARRIS,  
United States District Judge.

Approved as to Form:

VALENTINE BROOKES &  
ARTHUR H. KENT,

By /s/ VALENTINE BROOKES,  
Attorneys for Defendants.

[Endorsed]: Filed June 19, 1951.

The United States District Court, Northern  
District of California, Southern Division

No. 29210-M

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

CHARLES A. CRISPIN and  
ALMA B. CRISPIN,  
Defendants.

JUDGMENT

The within cause came on regularly to be heard in the above-entitled court, the Honorable George B. Harris, Judge, presiding without a jury. Plaintiff appeared by its attorneys, Frank J. Hennessy, United States Attorney, and Macklin Fleming, Assistant United States Attorney, and defendants appeared by their attorneys, Arthur H. Kent and Valentine Brookes. The Court having heard the facts and argument presented and having heretofore made and caused to be filed herein its Memorandum Opinion and Findings of Fact and Conclusions of Law,

Now, Therefore,

It Is Hereby Ordered, Adjudged and Decreed that plaintiff have and recover judgment from the defendants in the sum of \$614.77 plus interest as provided by law; and that costs be assessed in favor

of plaintiff and against defendant by the Clerk of  
this Court in the sum of \$. . . . .

Dated this 19th day of June, 1951.

/s/ GEORGE B. HARRIS,  
United States District Judge.

Approved as to Form:

VALENTINE BROOKES &  
ARTHUR H. KENT,

By /s/ VALENTINE BROOKES,  
Attorneys for Defendants.

[Endorsed]: Filed June 19, 1951.

Entered June 20, 1951.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that Charles A. Crispin  
and Alma B. Crispin, defendants above named,  
hereby appeal to the United States Court of Ap-  
peals for the Ninth Circuit from the final judgment  
entered in this action on June 20, 1951.

Dated August 15, 1951.

/s/ ARTHUR H. KENT,  
/s/ VALENTINE BROOKES,  
Attorneys for Defendants, Charles A. Crispin and  
Alma B. Crispin.

[Endorsed]: Filed August 15, 1951.



[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO  
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for the Appellants and Appellees:

Complaint.

Answer.

Stipulation of facts.

Memorandum opinion and order.

Findings of fact and conclusions of law.

Judgment.

Notice of appeal.

Cost bond on appeal.

Statement of points to be relied on.

Designation of contents of record on appeal.

Appellee's designation of record on appeal.

Plaintiff's exhibits 1 to 7.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court this 13th day of September, 1951.

[Seal]

C. W. CALBREATH,  
Clerk.

By /s/ C. M. TAYLOR,  
Deputy Clerk.

[Endorsed]: No. 13097. United States Court of Appeals for the Ninth Circuit. Charles A. Crispin and Alma B. Crispin, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed September 13, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.



In the United States Court of Appeals  
for the Ninth Circuit

No. 13097

CHARLES A. CRISPIN & ALMA B. CRISPIN,  
Appellants,

vs.

UNITED STATES OF AMERICA,  
Appellee.

STATEMENT OF POINTS TO BE RELIED ON  
AND DESIGNATION OF RECORD

Pursuant to Rule 19 (6) of the Rules of Practice of this Court, appellants state the points on which they intend to rely on this appeal, as follows:

1. The District Court made an error of law in holding that the aggregate consideration paid for appellants' annuity, for the purposes of Internal Revenue Code Section 22 (b) (2), does not include the consideration paid for that annuity by the employer, Standard-Vacuum Oil Company.

2. The District Court made an error of law in failing to hold that the cost of appellants' annuity for purposes of Internal Revenue Code Section 22 (b) (2), referred to therein as "aggregate consideration paid," was the sum of \$32,787.68.

Appellants designate as constituting all the material portions of the record, the following:

1. The Memorandum Opinion and Order of

United States District Judge George B. Harris,  
filed May 1, 1951;

2. The Findings of Fact and Conclusions of  
Law, filed by said Judge on June 19, 1951; and

3. The Judgment, entered on June 20, 1951.

4. Notice of Appeal.

5. Clerk's Certificate.

Dated San Francisco, California, September 18,  
1951.

/s/ ARTHUR H. KENT,

/s/ VALENTINE BROOKES,

Attorneys for Appellants.

[Endorsed]: Filed September 19, 1951.